

CAMPAIGN SPENDING LAW

HAWAII REVISED STATUTES

Chapter 11, Part XIII

March, 2014

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PART XIII CAMPAIGN FINANCE

A.	General Provisions	
§11-301	Purpose	1
§11-302	Definitions	1
B.	Campaign Spending Commission	
§11-311	Campaign Spending Commission established; composition .	6
§11-312	Terms of office	6
§11-313	No compensation	6
§11-314	Duties of the commission	6
§11-315	Advisory opinions	7
§11-316	Political activities prohibited	8
§11-317	Exemptions	8
C.	Registration	
§11-321	Registration of candidate committee or noncandidate committee	9
§11-322	Organizational report, candidate committee	9
§11-323	Organizational report, noncandidate committee	10
§11-324	Treasurer	11
§11-325	When an individual may not serve as a committee officer .	11
§11-326	Termination of candidate committee's or noncandidate committee's registration	11
§11-327	Ballot issue committee; contributions and expenditures .	12
D.	Reporting and Filing with the Commission	
§11-331	Filing of reports, generally	12
§11-332	Filing report by corporations	13
§11-333	Candidate committee reports	13
§11-334	Time for candidate committee to file preliminary, final, and supplemental reports	14
§11-335	Noncandidate committee reports	15
§11-336	Time for noncandidate committee to file preliminary, final, and supplemental reports	18
§11-337	Reporting expenditures	18
§11-338	Late contributions; report	19
§11-339	Final election period report for candidate committee or noncandidate committee receiving and expending \$1,000 or less during the election period	20
§11-340	Failure to file report; filing a substantially defective or deficient report	20
§11-341	Electioneering communications; statement of information .	21
§11-342	Fundraiser; notice of intent	24
§11-343	Reporting deadline	24
§11-344	Sale or use of information	24

E.	Contributions; Prohibitions; Limits	
§11-351	Contributions, generally	24
§11-352	False name contributions prohibited	25
§11-353	Anonymous contributions prohibited	25
§11-354	Fundraising on state or county property prohibited	25
§11-355	Contributions by state or county contractors prohibited	25
§11-356	Contributions by foreign national or foreign corporations prohibited	26
§11-357	Contributions to candidate committees; limits	26
§11-358	Contributions to noncandidate committees; limits	27
§11-359	Family contributions	27
§11-360	Contributions to a party	27
§11-361	Aggregation of contributions and expenditures	27
§11-362	Contributions limited from nonresident persons	28
§11-363	Other contributions and expenditures	28
§11-364	Excess contribution; return; escheat	29
F.	Loans	
§11-371	Loan to candidate committee	29
§11-372	Reporting loan; written loan agreement	30
§11-373	Noncandidate committee loan prohibited	30
G.	Expenditures	
§11-381	Campaign funds only used for certain purposes	30
§11-382	Prohibited uses of campaign funds	31
§11-383	Exceptions	32
§11-384	Disposition of campaign funds; termination of registration	32
H.	Advertisements	
§11-391	Advertisements	32
§11-392	House Bulletins	33
§11-393	Identification of certain top contributors to noncandidate Committees making only independent expenditures	33
	<i>[Section effective November 5, 2014.]</i>	
I.	Enforcement	
§11-401	Subpoena powers	34
§11-402	Filing of complaint	35
§11-403	Notice of complaint; opportunity to explain or respond to complaint	35
§11-404	Initial determination by the commission	35
§11-405	Preliminary determination regarding probable cause	35
§11-406	Waiver of further proceedings	35
§11-407	Contested case hearing	36
§11-408	Dismissal	36
§11-409	Final determination of violation; order	36

§11-410	Administrative fines; relief	36
§11-411	Criminal referral	37
§11-412	Criminal prosecution	37

J. Partial Public Financing

§11-421	Hawaii election campaign fund; creation	38
§11-422	Depletion of fund	38
§11-423	Voluntary expenditure limits; filing affidavit.	39
§11-424	Tax deduction for qualifying contributions	39
§11-425	Maximum amount of public funds available to candidate	40
§11-426	Candidate exceeds voluntary expenditure limit	40
§11-427	Reserving use of contributions	40
§11-428	Eligibility requirements for public funds	40
§11-429	Minimum qualifying contribution amounts; qualifying contribution statement	41
§11-430	Application for public funds	43
§11-431	Payment to candidate	43
§11-432	Use of public funds	43
§11-433	Post-election report required	43
§11-434	Post-election examination and audit; return of funds	44
§11-435	Report and recommendation	44

Note

Pilot comprehensive public funding for Hawaii county council election through 2014 election. L 2008, c 244, §§1 to 20.

PART XIII. CAMPAIGN FINANCE

A. GENERAL PROVISIONS

§11-301 Purpose. The purpose of this part is to provide transparency in the campaign finance process. Any ambiguity in the provisions of this part shall be construed to support transparency. [L 2010, c 211, pt of §2]

§11-302 Definitions. When used in this part

"Advertisement" means any communication, excluding sundry items such as bumper stickers, that;

- (1) Identifies a candidate directly or by implication, or identifies an issue or question that will appear on the ballot at the next applicable election; and
- (2) Advocates or supports the nomination, opposition, or election of the candidate, or advocates the passage or defeat of the issue or question on the ballot.

"Ballot issue committee" means a noncandidate committee that has the exclusive purpose of making or receiving contributions, making expenditures, or incurring financial obligations for or against any question or issue appearing on the ballot at the next applicable election.

"Campaign funds" means contributions, interest, rebates, refunds, loans, or advances received by a candidate committee or noncandidate committee.

"Candidate" means an individual who seeks nomination for election or seeks election to office. An individual remains a candidate until the individual's candidate committee terminates registration with the commission. An individual is a candidate if the individual does any of the following:

- (1) Files nomination papers for an office for the individual with the county clerk's office or with the chief election officer's office, whichever is applicable;
- (2) Receives contributions, makes expenditures, or incurs financial obligations of more than \$100 to bring about the individual's nomination for election, or to bring about the individual's election to office;
- (3) Gives consent for any other person to receive contributions, make expenditures, or incur financial obligations to aid the individual's nomination for election, or the individual's election, to office; or
- (4) Is certified to be a candidate by the chief election officer or county clerk.

"Candidate committee" means an organization, association, or individual that receives campaign funds, makes expenditures, or incurs financial obligations on behalf of a candidate with the candidate's authorization.

"Clearly identified" means the inclusion of name, photograph or other similar image, or other unambiguous identification of a candidate.

"Commission" means the campaign spending commission.

"Commissioner" means any person appointed to the commission.

"Contribution" means:

- (1) A gift, subscription, deposit of money or anything of value, or cancellation of a debt or legal obligation and includes the purchase of tickets to fundraisers, for the purpose of:
 - (A) Influencing the nomination for election, or the election, of any person to office;
 - (B) Influencing the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or
 - (C) Use by any candidate committee or noncandidate committee for the purpose of subparagraph (A) or (B);
- (2) The payment, by any person or party other than a candidate, candidate committee, or noncandidate committee, of compensation for the services of another person that are rendered to the candidate, candidate committee, or noncandidate committee without charge or at an unreasonably low charge for a purpose listed in paragraph (1);
- (3) A contract, promise, or agreement to make a contribution; or
- (4) Any loans or advances that are not documented or disclosed to the commission as provided in section 11-372;

"Contribution" does not include:

- (1) Services voluntarily provided without compensation by individuals to or on behalf of a candidate, candidate committee, or noncandidate committee;
- (2) A candidate's expenditure of the candidate's own funds; provided that this expenditure shall be reportable as other receipts and expenditures;
- (3) Any loans or advances to the candidate committee; provided that these loans or advances shall be reported as loans; or
- (4) An individual, candidate committee, or noncandidate committee engaging in internet activities for the purpose of influencing an election if:
 - (A) The individual, candidate committee, or noncandidate committee is uncompensated for the internet activities; or
 - (B) The individual, candidate committee, or noncandidate committee uses equipment or services for uncompensated internet activities, regardless of who owns the equipment and services.

"Earmarked funds" means contributions received by a candidate committee or noncandidate committee on the condition that the funds be contributed to or expended on certain candidates, issues, or questions.

"Election" means any election for office or for determining a question or issue provided by law or ordinance.

"Election period" means:

- (1) The two-year time period between the day after the general election through the day of the next general election, if a candidate is seeking nomination or election to a two-year office;
- (2) The four-year time period between the day after the general election through the day of the next general election, if a candidate is seeking nomination or election to a four-year office; or
- (3) For a special election, the period between the day after the general election for that office through the day of the special election.

"Equipment and services" includes computers, software, internet domain names, internet service providers, and any other technology that is used to provide access to or use of the Internet.

"Expenditure" means:

- (1) Any purchase or transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, or payment incurred or made, or the use or consumption of a nonmonetary contribution for the purpose of:
 - (A) Influencing the nomination for election, or the election, of any person seeking nomination for election or election to office, whether or not the person has filed the person's nomination papers;
 - (B) Influencing the outcome of any question or issue that has been certified to appear on the ballot at the next applicable election; or
 - (C) Use by any party for the purposes set out in subparagraph (A) or (B);
- (2) Any payment, by any person other than a candidate, candidate committee, or noncandidate committee, of compensation for the services of another person that are rendered to the candidate, candidate committee, or noncandidate committee for any of the purposes mentioned in paragraph (1)(A); provided that payment under this paragraph shall include provision of services without charge; or
- (3) The expenditure by a candidate of the candidate's own funds for the purposes set out in paragraph (1)(A).

"Expenditure" does not include:

- (1) Services voluntarily provided without compensation by individuals to or on behalf of a candidate, candidate committee, or noncandidate committee;
- (2) Voter registration efforts that are nonpartisan; or
- (3) An individual, candidate committee, or noncandidate committee engaging in internet activities for the purpose of influencing an election if:
 - (A) The individual, candidate committee, or noncandidate committee is uncompensated for internet activities; or

(B) The individual, candidate committee, or noncandidate committee uses equipment or services for uncompensated internet activities, regardless of who owns the equipment and services; provided that the internet activity exclusion does not apply to any payment for an advertisement other than a nominal fee; the purchase or rental of an electronic address list made at the direction of a candidate committee or noncandidate committee; or an electronic mail address list that is transferred to a candidate committee or noncandidate committee.

"House bulletin" means a communication sponsored by any person in the regular course of publication for limited distribution primarily to its employees or members.

"Immediate family" means a candidate's spouse or reciprocal beneficiary, as defined in section 572C-3, and any child, parent, grandparent, brother, or sister of the candidate, and the spouses or reciprocal beneficiaries of such persons.

"Independent expenditure" means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate that is not made in concert or cooperation with or at the request or suggestion of the candidate, the candidate committee, a party, or their agents.

"Individual" means a natural person.

"Internet activities" include:

- (1) Sending or forwarding electronic messages;
- (2) Providing a hyperlink or other direct access to another person's website;
- (3) Blogging;
- (4) Creating, maintaining, or hosting a website;
- (5) Paying a nominal fee for the use of another person's website; and
- (6) Any other form of communication distributed over the Internet.

"Limited liability company" means a business entity that is recognized as a limited liability company under the laws of the state in which it is established.

"Loan" means an advance of money, goods, or services, with a promise to repay in full or in part within a specified period of time. A loan does not include expenditures made on behalf of a candidate committee or noncandidate committee by a candidate, volunteer, or employee if:

- (1) The candidate, volunteer, or employee's aggregate expenditures do not exceed \$1,500 within a thirty-day period;
- (2) A dated receipt and a written description of the name and address of each payee and the amount, date, and purpose of each expenditure is provided to the candidate committee or noncandidate committee before the candidate committee or noncandidate committee reimburses the candidate, volunteer, or employee; and

- (3) The candidate committee or noncandidate committee reimburses the candidate, volunteer, or employee within forty-five days of the expenditure being made.

"Newspaper" means a publication of general distribution in the State issued once or more per month, which is written and published in the State.

"Noncandidate committee" means an organization, association, party, or individual that has the purpose of making or receiving contributions, making expenditures, or incurring financial obligations to influence the nomination for election, or the election, of any candidate to office, or for or against any question or issue on the ballot; provided that a noncandidate committee does not include:

- (1) A candidate committee;
- (2) Any individual making a contribution or making an expenditure of the individual's own funds or anything of value that the individual originally acquired for the individual's own use and not for the purpose of evading any provision of this part; or
- (3) Any organization that raises or expends funds for the sole purpose of producing and disseminating informational or educational communications that are not made to influence the outcome of an election, question, or issue on a ballot.

"Office" means any Hawaii elective public or constitutional office, excluding county neighborhood board and federal elective offices.

"Other receipts" means the candidate's own funds, interest, rebates, refunds, and any other funds received by a candidate committee or noncandidate committee, but does not include contributions received from other persons or loans.

"Party" means any political party that satisfies the requirements of section 11-61.

"Person" means an individual, a partnership, a candidate committee or noncandidate committee, a party, an association, a corporation, a business entity, an organization, or a labor union and its auxiliary committees.

"Political committees established and maintained by a national political party" means:

- (1) The National Committee;
- (2) The House Campaign Committee; and
- (3) The Senate Campaign Committee.

"Qualifying contribution" means an aggregate monetary contribution of \$100 or less by an individual Hawaii resident during a matching payment period that is received after a candidate files a statement of intent to seek public funds. A qualifying contribution does not include a loan, an in-kind contribution, or the candidate's own funds.

"Special election" means any election other than a primary or general election.

"Treasurer" means a person appointed under section 11-324 and unless expressly indicated otherwise, includes deputy treasurers. [L 2010, c 211, pt of §2]

B. CAMPAIGN SPENDING COMMISSION

§11-311 Campaign spending commission established; composition. (a) There is established a campaign spending commission, which shall be placed within the department of accounting and general services for administrative purposes.

(b) The commission shall consist of five members representing the general public and who are appointed by the governor from a list of ten nominees submitted by the judicial council. A vacancy on the commission shall be filled from the list of nominees or by the reappointment of a commissioner whose term has expired, subject to the limit on length of service imposed by section 26-34. The judicial council shall meet and expeditiously select additional persons for the list of nominees whenever the number of the eligible nominees falls below five. Notwithstanding section 26-34, appointments to the commission shall not be subject to the advice and consent of the senate.

(c) The judicial council may solicit applications for the list of nominees through community organizations and advertisements in any newspaper. [L 2010, c 211, pt of §2]

§11-312 Terms of office. The term of each commissioner shall be four years. [L 2010, c 211, pt of §2]

§11-313 No compensation. The commissioners shall serve without compensation but shall be reimbursed for reasonable expenses, including travel expenses, incurred in the discharge of their duties. [L 2010, c 211, pt of §2]

§11-314 Duties of the commission. The duties of the commission under this part are to:

- (1) Develop and adopt forms required by this part;
- (2) Adopt and publish a manual for all candidates, candidate committees, and noncandidate committees, describing the requirements of this part, including uniform and simple methods of recordkeeping;
- (3) Preserve all reports required by this part for at least ten years from the date of receipt by the commission;
- (4) *[Paragraph effective until November 4, 2014.]* Permit the inspection, copying, or duplicating of any report required by this part pursuant to rules adopted by the commission under chapter 91; provided that this paragraph shall not apply to the sale or use of information under section 11-344;
- (4) *[Paragraph effective November 5, 2014.]* Permit the inspection, copying, or duplication of any report required by this part pursuant to rules adopted by the commission under chapter 91; provided that this paragraph shall not apply to the sale or use of information under section 11-344;

- (5) *[Paragraph effective until November 4, 2014.]* Ascertain whether any candidate, candidate committee, noncandidate committee, or party has failed to file a report required by this part or has filed a substantially defective or deficient report. The commission shall notify these persons by first class mail that a fine may be assessed for the failure to file or the filing of a substantially defective or deficient report, and the defective or deficient report shall be corrected and explained. All fines collected under this section as authorized by section 11-410 shall be deposited in the general fund of the State;
- (5) *[Paragraph effective November 5, 2014.]* Ascertain whether any person has failed to file a report required by this part or has filed a substantially defective or deficient report. The commission shall notify the person by first class mail that a fine may be assessed for the failure to file or the filing of a substantially defective or deficient report, and the defective or deficient report shall be corrected and explained. All fines collected under this section as authorized by sections 11-340 and 11-410 shall be deposited in the general fund of the State;
- (6) Hold public hearings;
- (7) Investigate and hold hearings for receiving evidence of any violations pursuant to subpart I of this part;
- (8) Adopt rules pursuant to chapter 91;
- (9) Request the initiation of prosecution for the violation of this part pursuant to section 11-411;
- (10) Administer and monitor the distribution of public funds under this part;
- (11) Suggest accounting methods for candidates, candidate committees, or noncandidate committees in connection with reports and records required by this part;
- (12) Employ or contract with, without regard to chapters 76, 78, and 89, persons it finds necessary for the performance of its functions, including a full-time executive director, and to fix their compensation; provided that the commission shall have the authority, at its discretion, to dismiss persons employed by or contracted with the commission;
- (13) Conduct random audits and field investigations, as necessary; and
- (14) File for injunctive relief when indicated. [L 2010, c 211, pt of §2; am L 2013, c 112, §3]

§11-315 Advisory opinions. The commission may render written advisory opinions upon the request of any candidate, candidate committee, noncandidate committee, or other person or entity subject to this part, as to whether the facts and circumstances of a particular case constitute or will constitute a violation under this part. If no advisory opinion is rendered within ninety days after all information necessary to issue an opinion has been obtained, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation under this part. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the candidate, any candidate committee or noncandidate committee, or other person or entity

subject to this part, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the requester in the request for an advisory opinion. Nothing in this section shall be construed to allow the commission to issue rules through an advisory opinion. [L 2010, c 211, pt of §2]

§11-316 Political activities prohibited. (a) No commissioner or employee of the commission shall participate in any political campaign, including making a contribution to a candidate, candidate committee, or noncandidate committee, during the commissioner's term of office or employee's term of employment.

(b) Each commissioner and employee of the commission shall retain the right to:

- (1) Register and vote in any election;
- (2) Participate in the nonpolitical activities of a civic, community, social, labor, or professional organization, or of a similar organization;
- (3) Be a member of a political party or other noncandidate political organization and participate in its activities to the extent consistent with law; and
- (4) Otherwise participate fully in public affairs, except as prohibited by law, in a manner that does not materially compromise the commissioner's or the employee's efficiency or integrity as a commissioner or employee or the neutrality, efficiency, or integrity of the commission.

(c) Any commissioner or employee of the commission may request an advisory opinion from the state ethics commission to determine whether a particular activity constitutes or would constitute a violation of the code of ethics under part II of chapter 84 or this section. [L 2010, c 211, pt of §2]

§11-317 Exemptions. (a) The commission shall be exempt from section 26-35(a)(1), (4), and (5) and shall:

- (1) Make direct communications with the governor and legislature;
- (2) Make all decisions regarding employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the commission without the approval of the comptroller; and
- (3) Purchase all supplies, equipment, or furniture without the approval of the comptroller.

(b) The commission shall follow and be subject to all applicable personnel laws. [L 2010, c 211, pt of §2]

C. REGISTRATION

§11-321 Registration of candidate committee or noncandidate committee.

(a) Each candidate committee or noncandidate committee shall register with the commission by filing an organizational report as set forth in section 11-322 or 11-323, as applicable.

(b) Before filing the organizational report, each candidate committee or noncandidate committee shall mail or deliver an electronic filing form to the commission.

(c) The electronic filing form shall include a written acceptance of appointment and certification of each report, as follows:

(1) A candidate committee shall file a written acceptance of appointment by the chairperson and treasurer and a certification by the candidate and treasurer of each filed report; or

(2) A noncandidate committee shall file a written acceptance of appointment by the chairperson and treasurer and a certification by the chairperson and treasurer of each filed report.

(d) The organizational report for a candidate committee shall be filed within ten days of the earlier of:

(1) The date the candidate files nomination papers for office; or

(2) The date the candidate or candidate committee receives contributions or makes or incurs expenditures of more than \$100 in the aggregate during the applicable election period.

(e) An organizational report need not be filed under this section by an elected official who is a candidate for reelection to the same office in successive elections and has not sought election to any other office during the period between elections, unless the candidate is required to report a change in information pursuant to section 11-323.

(f) A candidate shall have only one candidate committee.

(g) The organizational report for a noncandidate committee shall be filed within ten days of receiving contributions or making or incurring expenditures of more than \$1,000, in the aggregate, in a two-year election period; provided that within the thirty-day period prior to an election, a noncandidate committee shall register by filing an organizational report within two days of receiving contributions or making or incurring expenditures of more than \$1,000, in the aggregate, in a two-year election period. [L 2010, c 211, pt of §2]

§11-322 Organizational report, candidate committee. (a) The candidate committee organizational report shall include:

(1) The committee's name and address, including web page address, if any;

(2) The candidate's name, address, and telephone number;

(3) The office being sought by the candidate, district, and party affiliation;

(4) The chairperson's name and address and, if appointed, the deputy chairperson's name and address;

(5) The treasurer's name and address and, if appointed, all deputy treasurers' names and addresses;

- (6) The name and address of each depository institution in which the committee will maintain any of its accounts and the applicable account number;
 - (7) A certification by the candidate and treasurer of the statements in the organizational report; and
 - (8) The name and address of each contributor who contributed an aggregate amount of more than \$100 to the candidate committee since the last election applicable to the office being sought and the amount and date of deposit of each such contribution.
- (b) Any change in information previously reported in the organizational report with the exception of subsection (a)(8) shall be electronically filed with the commission within ten days of the change being brought to the attention of the committee chairperson or treasurer. [L 2010, c 211, pt of §2]

§11-323 Organizational report, noncandidate committee. (a) The noncandidate committee organizational report shall include:

- (1) The committee's name, which shall incorporate the full name of the sponsoring entity, if any. An acronym or abbreviation may be used in other communications if the acronym or abbreviation is commonly known or clearly recognized by the general public. The committee's name shall not include the name of a candidate;
 - (2) The committee's address, including web page address, if any;
 - (3) The area, scope, or jurisdiction of the committee;
 - (4) The name and address of the committee's sponsoring entity. If the committee does not have a sponsoring entity, the committee shall specify the trade, profession, or primary interest of contributors to the committee;
 - (5) The name, address, telephone number, occupation, and principal place of business of the chairperson;
 - (6) The name, address, telephone number, occupation, and principal place of business of the treasurer and any other officers;
 - (7) An indication as to whether the committee was formed to support or oppose a specific ballot question or candidate and, if so, a brief description of the question or the name of the candidate;
 - (8) An indication as to whether the committee is a political party committee;
 - (9) The name, address, telephone number, occupation, and principal place of business of the custodian of the books and accounts;
 - (10) The name and address of the depository institution in which the committee will maintain its campaign account and each applicable account number;
 - (11) A certification by the chairperson and treasurer of the statements in the organizational report; and
 - (12) The name, address, employer, and occupation of each contributor who contributed an aggregate amount of more than \$100 to the noncandidate committee since the last election and the amount and date of deposit of each such contribution.
- (b) Any change in information previously reported in the organizational report, with the exception of subsection (a)(12), shall be electronically filed with the

commission within ten days of the change being brought to the attention of the committee chairperson or treasurer. [L 2010, c 211, pt of §2]

§11-324 Treasurer. (a) Every candidate committee or noncandidate committee shall appoint a treasurer on or before the day it files an organizational report. The following shall be permissible:

- (1) Up to five deputy treasurers may be appointed;
 - (2) A candidate may be appointed as the treasurer or deputy treasurer; and
 - (3) An individual who is not an officer or treasurer may be appointed by the candidate, on a fee or voluntary basis, to specifically prepare and file reports with the commission.
- (b) A treasurer may resign or be removed at any time.
- (c) In case of death, resignation, or removal of the treasurer, the candidate, candidate committee, or noncandidate committee shall promptly appoint a successor. During the period that the office of treasurer is vacant, the candidate, candidate committee, or chairperson, or party chairperson in the case of a party, whichever is applicable, shall serve as treasurer.
- (d) Only the treasurer and deputy treasurers shall be authorized to receive contributions or to make or incur expenditures on behalf of the candidate committee or noncandidate committee.
- (e) The treasurer shall establish and maintain itemized records showing:
- (1) The amount of each monetary contribution;
 - (2) The description and value of each nonmonetary contribution; and
 - (3) The name and address of each contributor making a contribution of more than \$25 in value; provided that information regarding the employer and occupation of contributors shall also be collected and maintained for a noncandidate committee.
- (f) The treasurer shall maintain detailed accounts, bills, receipts, and other records to establish that reports were properly prepared and filed.
- (g) The records shall be retained for at least five years after the report is filed.
- [L 2010, c 211, pt of §2]

§11-325 When an individual may not serve as a committee officer. No candidate committee or noncandidate committee that supports or opposes a candidate shall have an officer who serves as an officer on any other candidate committee or noncandidate committee that supports or opposes the same candidate. [L 2010, c 211, pt of §2]

§11-326 Termination of candidate committee's or noncandidate committee's registration. A candidate committee or noncandidate committee may terminate its registration if:

- (1) The candidate committee or noncandidate committee:
 - (A) Files a request for registration termination form;
 - (B) Files a report disclosing contributions and expenditures not previously reported by the committee, and the committee has no surplus or deficit; and

- (C) Mails or delivers to the commission a copy of the committee's closing bank statement; and
- (2) The request is approved by the commission. [L 2010, c 211, pt of §2]

§11-327 Ballot issue committee; contributions and expenditures. (a) A ballot issue committee shall receive contributions or make expenditures only for or against any issue appearing on the ballot at the next applicable election.

(b) A ballot issue committee is prohibited from receiving contributions or making expenditures to influence the nomination or election of a candidate to office.

(c) A ballot issue committee shall return all surplus funds to the contributors or donate funds to a community service, educational, youth, recreational, charitable, scientific, or literary organization within ninety days after the election for which the issue appeared on the ballot. Surplus funds that are not returned or donated within ninety days after the election for which the issue appeared on the ballot shall escheat to the Hawaii election campaign fund.

(d) Every ballot issue committee shall terminate its registration with the commission by filing a termination report to be approved as provided in section 11-326. The termination report shall be filed within ninety days after the election for which the issue appeared on the ballot. [L 2010, c 211, pt of §2]

D. REPORTING AND FILING WITH THE COMMISSION

§11-331 Filing of reports, generally. (a) *[Subsection effective until November 4, 2014.]* Every report required to be filed by a candidate or candidate committee shall be certified by the candidate and treasurer.

(a) *[Subsection effective November 5, 2014.]* Every report required to be filed by a candidate or candidate committee shall be certified as complete and accurate by the candidate and treasurer.

(b) *[Subsection effective until November 4, 2014.]* Every report required to be filed by a noncandidate committee shall be certified by the chairperson and treasurer.

(b) *[Subsection effective November 5, 2014.]* Every report required to be filed by a noncandidate committee shall be certified as complete and accurate by the chairperson and treasurer.

(c) All reports required to be filed under this part shall be filed on the commission's electronic filing system.

(d) For purposes of this part, whenever a report is required to be filed with the commission, "filed" means that a report shall be filed with the commission's electronic filing system by the date and time specified for the filing of the report by:

- (1) The candidate or candidate committee of a candidate who is seeking election to the:
 - (A) Office of governor;
 - (B) Office of lieutenant governor;
 - (C) Office of mayor;
 - (D) Office of prosecuting attorney;
 - (E) County council;

- (F) Senate;
- (G) House of representatives;
- (H) Office of Hawaiian affairs; or
- (2) A noncandidate committee required to be registered with the commission pursuant to section 11-323.

(e) To be timely filed, a committee's reports shall be filed with the commission's electronic filing system on or before 11:59 p.m. Hawaiian standard time on the filing date specified.

(f) *[Subsection effective until November 4, 2014.]* All reports filed under this part are public records.

(f) *[Subsection effective November 5, 2014.]* All reports filed under this part are public records and shall be made available for public inspection on the commission's website in a searchable database. [L 2010, c 211, pt of §2; am L 2011, c5, §4; am L 2013 c 112, §4]

§11-332 Filing report by corporations. *[Section repealed November 5, 2014. L 2013, C112, §§11, 15.]* (a) A corporation shall file a report with the commission for contributions from its own treasury that aggregate more than \$1,000 per two year election period made directly to a candidate or candidate committee; provided that this section shall not authorize contributions to a candidate or candidate committee where otherwise prohibited by this part. The reporting shall be made pursuant to the time requirements contained in section 11-336 and section 11-338.

(b) The filing shall include the name of the corporation, business address, a contact individual, and amounts contributed that are more than \$100 to each candidate or candidate committee. [L 2010, c 211, pt of §3]

§11-333 Candidate committee reports. (a) The candidate and treasurer shall file preliminary, final, and supplemental reports that shall disclose the following information:

- (1) The candidate committee's name and address;
- (2) The cash on hand at the beginning of the reporting period and election period;
- (3) The reporting period and election period aggregate totals for each of the following categories:
 - (A) Contributions;
 - (B) Expenditures;
 - (C) Other receipts; and
 - (D) Loans;
- (4) The cash on hand at the end of the reporting period; and
- (5) The surplus or deficit at the end of the reporting period.

(b) Schedules filed with the reports shall include the following additional information:

- (1) The amount and date of deposit of each contribution and the name and address of each contributor who makes contributions aggregating more than \$100 in an election period; provided that if all the information is not

on file, the contribution shall be returned to the contributor within thirty days of deposit;

- (2) The amount and date of deposit of each contribution and the name, address, occupation, and employer of each contributor who makes contributions aggregating \$1,000 or more during an election period; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;
 - (3) All expenditures, including the name and address of each payee and the amount, date, and purpose of each expenditure. Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements shall be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose;
 - (4) The amount, date of deposit, and description of other receipts and the name and address of the source of each of the other receipts;
 - (5) Information about each loan received by the committee, together with the names and addresses of the lender and each person liable directly, and the amount of each loan. A copy of the executed loan document shall be received by the commission by mail or delivery on or before the filing date for the report covering the reporting period when the loan was received. The document shall contain the terms of the loan, including the interest and repayment schedule. Failure to disclose the loan or to provide documentation of the loan to the commission shall cause the loan to be treated as a contribution, subject to all relevant provisions of this part;
 - (6) A description of each durable asset, the date of acquisition, value at the time of acquisition, and the name and address of the vendor or contributor of the asset; and
 - (7) The date of disposition of each durable asset, value at the time of disposition, the method of disposition, and the name and address of the person receiving the asset.
- (c) The candidate committee shall file a late contribution report as provided in section 11-338 if the committee receives late contributions from any person aggregating more than \$500. [L 2010, c 211, pt of §2]

§11-334 Time for candidate committee to file preliminary, final, and supplemental reports. (a) The candidate and treasurer of the candidate committee of each candidate whose name will appear on the ballot in the immediately succeeding election shall file preliminary, final, and supplemental reports.

- (1) The filing dates for preliminary reports are:
 - (A) Thirty calendar days prior to a primary election;
 - (B) Ten calendar days prior to a primary, each special, or each nonpartisan election; and
 - (C) Ten calendar days prior to a general election; provided that this preliminary report does not need to be filed by a candidate who is unsuccessful in a primary, special, or nonpartisan election, or a

candidate who is elected to office in the primary, initial special, or initial nonpartisan election.

The preliminary report filed by the date required under subparagraph (A) shall be current through June 30, and all other preliminary reports shall be current through the fifth calendar day before the filing deadline of those other preliminary reports.

- (2) The filing date for the final primary report is twenty calendar days after a primary, initial special, or initial nonpartisan election. The report shall be current through the day of the applicable election.
- (3) The filing date for the final election period report is thirty calendar days after a general, subsequent, subsequent special, or subsequent nonpartisan election. The report shall be current through the day of the applicable election. The final election period report shall be filed by a candidate who is unsuccessful in a primary, initial special, or initial nonpartisan election or a candidate who is elected to office in the primary, initial special, or initial nonpartisan election.
- (4) The filing dates for supplemental reports are:
 - (A) January 31 after an election year; and
 - (B) July 31 after an election year.

The report shall be current through December 31 for the report filed on January 31 and current through June 30 for the report filed on July 31.

(b) A candidate and treasurer of the candidate committee of each candidate with a deficit or surplus whose name will not appear on the ballot in the immediately succeeding election shall file a supplemental report every six months on January 31 and July 31 until:

- (1) The candidate's name appears on the ballot and then is subject to the reporting requirements in subsection (a); or
- (2) The committee's registration is terminated as provided in section 11-326.

The report shall be current through December 31 for the report filed on January 31 and current through June 30 for the report filed on July 31.

(c) A candidate and treasurer of the candidate committee of each candidate shall continue to file all required reports until the committee's registration is terminated as provided in section 11-326. [L 2010, c 211, pt of §2; am L 2012, c 118, §1]

§11-335 Noncandidate committee reports. *[Section effective until November 4, 2014.]* (a) The authorized person in the case of a party, or treasurer in the case of a noncandidate committee that is not a party, shall file preliminary, final, and supplemental reports that disclose the following information:

- (1) The noncandidate committee's name and address;
- (2) The cash on hand at the beginning of the reporting period and election period;
- (3) The reporting period and election period aggregate totals for each of the following categories:
 - (A) Contributions received;
 - (B) Contributions made;
 - (C) Expenditures; and

- (D) Other receipts;
- (4) The cash on hand at the end of the reporting period; and
- (5) The surplus or deficit at the end of the reporting period.
- (b) Schedules filed with the reports shall include the following additional information:
 - (1) The amount and date of deposit of each contribution received and the name, address, occupation, and employer of each contributor making a contribution aggregating more than \$100 during an election period, which was not previously reported; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;
 - (2) The amount and date of each contribution made, and the name and address of the candidate committee or noncandidate committee to which the contribution was made;
 - (3) All expenditures, including the name and address of each payee and the amount, date, and purpose of each expenditure; provided that:
 - (A) Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements shall be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose; and
 - (B) The purpose of an independent expenditure shall include the name of the candidate who is supported or opposed by the expenditure, and whether the expenditure supports or opposes the candidate;
 - (4) The amount, date of deposit, and description of other receipts and the name and address of the source of each of the other receipts;
 - (5) A description of each durable asset, the date of acquisition, value at the time of acquisition, and the name and address of the vendor or contributor of the asset; and
 - (6) The date of disposition of a durable asset, value at the time of disposition, method of disposition, and name and address of the person receiving the asset.
 - (c) No loan may be made or received by a noncandidate committee.
 - (d) The authorized person in the case of a party, or treasurer in the case of a noncandidate committee that is not a party, shall file a late contribution report as provided in section 11-338 if the committee receives late contributions from any person aggregating more than \$500 or makes late contributions aggregating more than \$500. [L 2010, c 211, pt of §2; am L 2013, c 111, §1]

§11-335 Noncandidate committee reports. *[Section effective November 5, 2014.]* (a) The authorized person in the case of a party, or treasurer in the case of a noncandidate committee that is not a party, shall file preliminary, final, and supplemental reports that disclose the following information:

- (1) The noncandidate committee's name and address;
- (2) The cash on hand at the beginning of the reporting period and election period;

- (3) The reporting period and election period aggregate totals for each of the following categories:
 - (A) Contributions received;
 - (B) Contributions made;
 - (C) Expenditures; and
 - (D) Other receipts;
- (4) The cash on hand at the end of the reporting period; and
- (5) The surplus or deficit at the end of the reporting period.
- (b) Schedules filed with the reports shall include the following additional information:
 - (1) The amount and date of deposit of each contribution received and the name, address, occupation, and employer of each contributor making a contribution aggregating more than \$100 during an election period, which was not previously reported; provided that if all the information is not on file, the contribution shall be returned to the contributor within thirty days of deposit;
 - (2) The amount and date of each contribution made, and the name and address of the candidate committee or noncandidate committee to which the contribution was made;
 - (3) All expenditures, including the name and address of each payee and the amount, date, and purpose of each expenditure; provided that:
 - (A) Expenditures for advertisements or electioneering communications shall include the names of the candidates supported, opposed, or clearly identified;
 - (B) Expenditures for consultants, advertising agencies and similar firms, credit card payments, salaries, and candidate reimbursements shall be itemized to permit a reasonable person to determine the ultimate intended recipient of the expenditure and its purpose; and
 - (C) Independent expenditures shall include the name of any candidate supported, opposed, or clearly identified; and
The purpose of an independent expenditure shall include the name of the candidate who is supported or opposed by the expenditure, and whether the expenditure supports or opposes the candidate;
 - (4) For noncandidate committees making only independent expenditures, certification that no expenditures have been coordinated with a candidate, candidate committee, or any agent of a candidate of candidate committee;
 - (5) The amount, date of deposit, and description of other receipts and the name and address of the source of each of the other receipts;
 - (6) A description of each durable asset, the date of acquisition, value at the time of acquisition, and the name and address of the vendor or contributor of the asset; and
 - (7) The date of disposition of a durable asset, value at the time of disposition, method of disposition, and name and address of the person receiving the asset.
- (c) No loan may be made or received by a noncandidate committee.

(d) The authorized person in the case of a party, or treasurer in the case of a noncandidate committee that is not a party, shall file a late contribution report as provided in section 11-338 if the committee receives late contributions from any person aggregating more than \$500 or makes late contributions aggregating more than \$500.

(e) For purposes of this section “electioneering communication” means the same as defined in section 11-341. [L 2010, c 211, pt of §2; am L 2013, c 111, §1 and c 112, §5]

§11-336 Time for noncandidate committee to file preliminary, final, and supplemental reports. (a) The filing dates for preliminary reports are:

(1) Ten calendar days prior to a primary, special, or nonpartisan election; and

(2) Ten calendar days prior to a general election.

Each preliminary report shall be current through the fifth calendar day prior to the filing of the report.

(b) The filing date for the final primary report is twenty calendar days after the primary, initial special, or initial nonpartisan election. The report shall be current through the day of the applicable election.

(c) The filing date for the final election period report is thirty calendar days after a general, subsequent special, or subsequent nonpartisan election. The report shall be current through the day of the applicable election.

(d) The filing dates for supplemental reports are:

(1) January 31; and

(2) July 31 after an election year.

The report shall be current through December 31 for the report filed on January 31 and current through June 30 for the report filed on July 31.

(e) The authorized person in the case of a party, or treasurer in the case of any other noncandidate committee, shall continue to file all reports until the committee's registration is terminated as provided in section 11-326. [L 2010, c 211, pt of §2; am L 2013, c 111, §2]

§11-337 Reporting expenditures. *[Section effective until November 4, 2014.]* For purposes of this part, an expenditure is deemed to be made or incurred when the services are rendered or the product is delivered. Services rendered or products delivered for use during a reporting period are deemed delivered or rendered during the period or periods of use; provided that these expenditures shall be reasonably allocated between periods in accordance with the time the services or products are actually used. [L 2010, c 211, pt of §2]

§11-337 Reporting expenditures. *[Section effective November 5, 2014.]* (a) For purposes of this part, an expenditure is deemed to be made or incurred when the services are rendered or the product is delivered. Services rendered or products delivered for use during a reporting period are deemed delivered or rendered during the period or periods of use; provided that these expenditures shall be reasonably allocated between periods in accordance with the time the services or products are actually used.

(b) Any expenditure that is contracted or paid for and that is to be rendered during the last three days prior to an election shall be included in a late expenditure report as provided in section 11-338. [L 2010, c 211, pt of§2; am L 2013, c 112, §6]

§11-338 Late contributions; report. *[Section effective until November 4, 2014.]* (a) The candidate, authorized person in the case of a noncandidate committee that is a party, or treasurer in the case of a candidate committee or other noncandidate committee, that, within the period of fourteen calendar days through four calendar days prior to any election, makes contributions aggregating more than \$500, or receives contributions from any person aggregating more than \$500, shall file a late contribution report by means of the commission's electronic filing system on or before the third calendar day prior to the election.

(b) The late contribution report shall include the following information:

- (1) Name, address, occupation, and employer of the contributor;
- (2) Name of the candidate, candidate committee, or noncandidate committee making or receiving the contribution;
- (3) The amount of the contribution;
- (4) The contributor's aggregate contributions to the candidate, candidate committee, or noncandidate committee; and
- (5) The purpose, if any, to which the contribution will be applied.

(c) A late contribution report filed pursuant to this section shall be in addition to any other report required to be filed by this part. [L 2010, c 211, pt of §2]

§11-338 Late contributions; late expenditures; report. *[Section effective November 5, 2014.]* (a) The candidate, authorized person in the case of a noncandidate committee that is a party, or treasurer in the case of a candidate committee or other noncandidate committee, that, within the period of fourteen calendar days through four calendar days prior to any election, makes contributions aggregating more than \$500, or receives contributions from any person aggregating more than \$500, shall file a late contribution report by means of the commission's electronic filing system on or before the third calendar day prior to the election.

(b) The late contribution report shall include the following information:

- (1) Name, address, occupation, and employer of the contributor;
- (2) Name of the candidate, candidate committee, or noncandidate committee making or receiving the contribution;
- (3) The amount of the contribution received;
- (4) The amount of the contribution made;
- (5) The contributor's aggregate contributions to the candidate, candidate committee, or noncandidate committee; and
- (6) The purpose, if any, to which the contribution will be applied, including, for contributions to a noncandidate committee, the name of any candidate supported, opposed, or clearly identified.

(c) A noncandidate committee that makes independent expenditures in an aggregate amount of more than \$500 within the period between fourteen and four calendar days prior to any election shall file a late expenditure report by means of the commission's electronic filing system on or before the third calendar day prior to the

election. The late expenditure report shall include the following information for each expenditure:

- (1) The amount and date made;
 - (2) The vendor name, address, and contract information; and
 - (3) The purpose, including the name of any candidate supported, opposed, or clearly identified by the expenditure.
- (d) A late contribution report or late expenditure report filed pursuant to this section shall be in addition to any other report required to be filed by this part. [L 2010, c 211, pt of §2; am L 2013, c 112, §7]

§11-339 Final election period report for candidate committee or noncandidate committee receiving and expending \$1,000 or less during the election period. (a) Any provision of law to the contrary notwithstanding, a candidate committee or noncandidate committee whose aggregate contributions and aggregate expenditures for the election period total \$1,000 or less, shall electronically file only a final election period report, and need not file a preliminary and final primary report, a preliminary and final general report, or a special election report.

(b) Until the candidate committee's or noncandidate committee's registration is terminated as provided in section 11-326, supplemental reports and other reports required by this part shall be filed. [L 2010, c 211, pt of §2]

§11-340 Failure to file report; filing a substantially defective or deficient report. (a) *[Subsection effective until November 4, 2014.]* True and accurate reports shall be filed with the commission on or before the due dates specified in this part. The commission may assess a fine against a candidate committee or noncandidate committee that is required to file a report under this part if the report is not filed by the due date or if the report is substantially defective or deficient, as determined by the commission.

(a) *[Subsection effective November 5, 2014.]* True and accurate reports shall be filed with the commission on or before the due dates specified in this part. The commission may assess a fine against a person that is required to file a report under this part if the report is not filed by the due date or if the report is substantially defective or deficient, as determined by the commission.

(b) The fine for not filing a report by the due date, if assessed, shall not exceed \$50 per day for the first seven days, beginning with the day after the due date of the report, and shall not exceed \$200 per day thereafter; provided that:

- (1) In aggregate, the fine shall not exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; and
- (2) The minimum fine for a report filed more than four days after the due date, if assessed, shall be \$200.

(c) Subsection (b) notwithstanding, if a candidate committee does not file the second preliminary primary report or the preliminary general report, or if a noncandidate committee does not file the preliminary primary report or the preliminary general report by the due date, the fine, if assessed, shall not exceed \$300 per day; provided that:

- (1) In aggregate, the fine shall not exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; and
- (2) The minimum fine, if assessed, shall be \$300.
- (d) If the commission determines that a report is substantially defective or deficient, the commission shall notify the candidate committee by first class mail that:
 - (1) The report is substantially defective or deficient; and
 - (2) A fine may be assessed.
- (e) If the corrected report is not filed with the commission's electronic filing system on or before the fourteenth day after the notice of defect or deficiency has been mailed, the fine, if assessed, for a substantially defective or deficient report shall not exceed \$50 per day for the first seven days, beginning with the fifteenth day after the notice was sent, and shall not exceed \$200 per day thereafter; provided that:
 - (1) In aggregate, the fine shall not exceed twenty-five per cent of the total amount of contributions or expenditures, whichever is greater, for the period covered by the report; and
 - (2) The minimum fine for not filing a corrected report more than eighteen days after the notice, if assessed, shall be \$200.
- (f) The commission shall publish on its website the names of all candidate committees that have failed to:
 - (1) File a report; or
 - (2) Correct a report within the time allowed by the commission.
- (g) All fines collected under this section shall be deposited into the general fund. [L 2010, c 211, pt of §2; am L 2013, c 112, §8]

§11-341 Electioneering communications; statement of information.

[Section effective until November 4, 2014.] (a) Each person who makes a disbursement for electioneering communications in an aggregate amount of more than \$2,000 during any calendar year shall file with the commission a statement of information within twenty-four hours of each disclosure date provided in this section.

- (b) Each statement of information shall contain the following:
 - (1) The name of the person making the disbursement, name of any person or entity sharing or exercising discretion or control over such person, and the custodian of the books and accounts of the person making the disbursement;
 - (2) The state of incorporation and principal place of business or, for an individual, the address of the person making the disbursement;
 - (3) The amount of each disbursement during the period covered by the statement and the identification of the person to whom the disbursement was made;
 - (4) The elections to which the electioneering communications pertain and the names, if known, of the candidates identified or to be identified;
 - (5) If the disbursements were made by a candidate committee or noncandidate committee, the names and addresses of all persons who contributed to the candidate committee or noncandidate committee for the purpose of publishing or broadcasting the electioneering communications;

- (6) If the disbursements were made by an organization other than a candidate committee or noncandidate committee, the names and addresses of all persons who contributed to the organization for the purpose of publishing or broadcasting the electioneering communications; and
- (7) Whether or not any electioneering communication is made in coordination, cooperation, or concert with or at the request or suggestion of any candidate, candidate committee, or noncandidate committee, or agent of any candidate if any, and if so, the identification of the candidate, a candidate committee or a noncandidate committee, or agent involved.

(c) For purposes of this section:

"Disclosure date" means, for every calendar year, the first date by which a person has made disbursements during that same year of more than \$2,000 in the aggregate for electioneering communications, and the date of any subsequent disbursements by that person for electioneering communications.

"Electioneering communication" means any advertisement that is broadcast from a cable, satellite, television, or radio broadcast station; published in any periodical or newspaper; or sent by mail at a bulk rate, and that:

- (1) Refers to a clearly identifiable candidate;
- (2) Is made, or scheduled to be made, either within thirty days prior to a primary or initial special election or within sixty days prior to a general or special election; and
- (3) Is not susceptible to any reasonable interpretation other than as an appeal to vote for or against a specific candidate.

"Electioneering communication" shall not include communications:

- (1) In a news story or editorial disseminated by any broadcast station or publisher of periodicals or newspapers, unless the facilities are owned or controlled by a candidate, candidate committee, or noncandidate committee;
- (2) That constitute expenditures by the disbursing organization;
- (3) In house bulletins; or
- (4) That constitute a candidate debate or forum, or solely promote a debate or forum and are made by or on behalf of the person sponsoring the debate or forum.

(d) For purposes of this section, a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement. [L 2010, c 211, pt of §2]

§11-341 Electioneering communications; statement of information.

[Section effective November 5, 2014.] (a) Each person who makes an expenditure for electioneering communications in an aggregate amount of more than \$2,000 during any calendar year shall file with the commission a statement of information within twenty-four hours of each disclosure date provided in this section.

(b) Each statement of information shall contain the following:

- (1) The name of the person making the expenditure, name of any person or entity sharing or exercising discretion or control over the person,

and the custodian of the books and accounts of the person making the expenditure;

- (2) The names and titles of the executives or board of directors who authorized the expenditure, if the expenditure was made by a noncandidate committee, business entity, or an organization;
 - (3) The state of incorporation or formation and principal address of the noncandidate committee, business entity, or organization for an individual, the name, address, occupation, and employer of the individual making the expenditure;
 - (4) The amount of each expenditure during the period covered by the statement and the identification of the person to whom the expenditure was made;
 - (5) The elections to which the electioneering communications pertain and the names of any clearly identifiable candidates and whether those candidates are supported or opposed;
 - (6) If the expenditures were made by a candidate committee or noncandidate committee, the names and addresses of all persons who contributed to the candidate committee or noncandidate committee for the purpose of publishing or broadcasting the electioneering communications;
 - (7) If the expenditures were made by an organization other than a candidate committee or noncandidate committee, the names and addresses of all persons who contributed to the organization for the purpose of publishing or broadcasting the electioneering communications;
 - (8) Whether or not any electioneering communication is made in coordination, cooperation, or concert with or at the request or suggestion of any candidate, candidate committee, or noncandidate committee, or agent of any candidate if any, and if so, the identification of the candidate, a candidate committee, or a noncandidate committee, or agent involved[-]; and
 - (9) The three top contributors as required under section 11-393, if applicable.
- (c) An electioneering communication statement of information filed pursuant

To this section shall be in addition to the filing of any other report required under part.

(d) For purposes of this section:

"Disclosure date" means, for every calendar year, the first date by which a person has made expenditures during that same year of more than \$2,000 in the aggregate for electioneering communications, and the date of any subsequent expenditures by that person for electioneering communications.

"Electioneering communication" means any advertisement that is broadcast from a cable, satellite, television, or radio broadcast station; published in any periodical or newspaper or by electronic means; or sent by mail at a bulk rate, and that:

- (1) Refers to a clearly identifiable candidate;
- (2) Is made, or scheduled to be made, either within thirty days prior to a primary or initial special election or within sixty days prior to a general or special election; and
- (3) Is not susceptible to any reasonable interpretation other than as an appeal to vote for or against a specific candidate.

"Electioneering communication" shall not include communications:

- (1) In a news story or editorial disseminated by any broadcast station or publisher of periodicals or newspapers, unless the facilities are owned or controlled by a candidate, candidate committee, or noncandidate committee;
- (2) That constitute expenditures by the expending organization;
- (3) In house bulletins; or
- (4) That constitute a candidate debate or forum, or solely promote a debate or forum and are made by or on behalf of the person sponsoring the debate or forum.

(e) For purposes of this section, a person shall be treated as having made an expenditure if the person has executed a contract to make the expenditure. [L 2010, c 211, pt of §2; am L 2013, c 112, §9]

§11-342 Fundraiser; notice of intent. (a) No fundraiser shall be held unless a notice of intent to hold the fundraiser is filed with the commission setting forth the name and address of the person in charge, the price per person, the date, hour, and place of the fundraiser, and the method thereof.

(b) The person in charge of the fundraiser shall file the notice with the commission prior to the fundraiser.

(c) As used in this section, "fundraiser" means any function held for the benefit of a candidate, candidate committee, or noncandidate committee that is intended or designed, directly or indirectly, to raise contributions for which the price or suggested contribution for attending the function is more than \$25 per person. [L 2010, c 211, pt of §2]

§11-343 Reporting deadline. When any reporting deadline falls on a Saturday, Sunday, or holiday designated in section 8-1, the reporting deadline shall be the next succeeding day that is not a Saturday, Sunday, or holiday. [L 2010, c 211, pt of §2]

§11-344 Sale or use of information. No information in the reports or copies of the reports filed with the commission shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose. [L 2010, c 211, pt of §2]

E. CONTRIBUTIONS; PROHIBITIONS; LIMITS

§11-351 Contributions, generally. (a) Monetary contributions and other campaign funds shall be promptly deposited in a depository institution, as defined by section 412:1-109, duly authorized to do business in the state, including a bank, savings bank, savings and loan association, depository financial services loan company, credit union, intra-Pacific bank, or similar financial institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration in the name of the candidate, candidate committee, or noncandidate committee, whichever is applicable.

(b) A candidate, candidate committee, or noncandidate committee, shall not accept a contribution of more than \$100 in cash from a single person without issuing a receipt to the contributor and keeping a record of the contribution.

(c) Each candidate committee or noncandidate committee shall disclose the original source of all earmarked funds, the ultimate recipient of the earmarked funds, and the fact that the funds are earmarked. [L 2010, c 211, pt of §2]

§11-352 False name contributions prohibited. (a) No person shall make a contribution to any candidate, candidate committee, or noncandidate committee in any name other than that of the person who owns the money, property, or service.

(b) All contributions made in the name of a person other than the owner of the money, property, or service shall escheat to the Hawaii election campaign fund. [L 2010, c 211, pt of §2]

§11-353 Anonymous contributions prohibited. (a) Except as provided in subsection (d), no person shall make an anonymous contribution to any candidate, candidate committee, or noncandidate committee.

(b) A candidate, candidate committee, or noncandidate committee shall not knowingly receive, accept, or retain an anonymous contribution, or report such contribution as an anonymous contribution, except as provided in this section.

(c) An anonymous contribution shall not be used or expended by the candidate, candidate committee, or noncandidate committee, but shall be returned to the contributor. If the contributor cannot be identified, the contribution shall escheat to the Hawaii election campaign fund.

(d) This section shall not apply to amounts that aggregate to less than \$500 that are received from ten or more persons at the same political function. The receipt of these contributions shall be disclosed in a report filed pursuant to sections 11-333 and 11-335. [L 2010, c 211, pt of §2]

§11-354 Fundraising on state or county property prohibited. (a) Except as provided in subsection (b), no person shall solicit a contribution in a government facility that is used for the discharge of official duties by an officer or employee of the State or county.

(b) The prohibition in subsection (a) shall not apply to any government facility that permits use by nongovernmental organizations for a fee or with reservations; provided that the government facility's use rules do not prohibit political activities on the premises. Government facilities that permit use for political activities shall be available to a candidate, candidate committee, or noncandidate committee for fundraising activities pursuant to the same terms and conditions that would otherwise apply to use by nongovernmental organizations.

(c) A person who violates the prohibition of fundraising on state or county property shall be guilty of a misdemeanor. [L 2010, c 211, pt of §2]

§11-355 Contributions by state and county contractors prohibited. (a) It shall be unlawful for any person who enters into any contract with the State, any of the counties, or any department or agency thereof either for the rendition of personal

services, the buying of property, or furnishing of any material, supplies, or equipment to the State, any of the counties, any department or agency thereof, or for selling any land or building to the State, any of the counties, or any department or agency thereof, if payment for the performance of the contract or payment for material, supplies, equipment, land, property, or building is to be made in whole or in part from funds appropriated by the legislative body, at any time between the execution of the contract through the completion of the contract, to:

- (1) Directly or indirectly make any contribution, or promise expressly or impliedly to make any contribution to any candidate committee or noncandidate committee, or to any candidate or to any person for any political purpose or use; or
- (2) Knowingly solicit any contribution from any person for any purpose during any period.

(b) Except as provided in subsection (a), this section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any noncandidate committee by any person other than the state or county contractor for the purpose of influencing the nomination for election, or the election of any person to office.

(c) For purposes of this section, "completion of the contract" means that the parties to the government contract have either terminated the contract prior to completion of performance or fully performed the duties and obligations under the contract, no disputes relating to the performance and payment remain under the contract, and all disputed claims have been adjudicated and are final. [L 2010, c 211, pt of §2]

§11-356 Contributions by foreign national or foreign corporation prohibited. (a) Except as provided in subsection (b), no contributions or expenditures shall be made to or on behalf of a candidate, candidate committee, or noncandidate committee, by a foreign national or foreign corporation, including a domestic subsidiary of a foreign corporation, a domestic corporation that is owned by a foreign national, or a local subsidiary where administrative control is retained by the foreign corporation, and in the same manner prohibited under 2 United States Code section 441e and 11 Code of Federal Regulations section 110.20, as amended.

- (b) A foreign-owned domestic corporation may make contributions if:
- (1) Foreign national individuals do not participate in election-related activities, including decisions concerning contributions or the administration of a candidate committee or noncandidate committee; or
 - (2) The contributions are domestically-derived. [L 2010, c 211, pt of §2]

§11-357 Contributions to candidate committees; limits. (a) No person shall make contributions to:

- (1) A candidate seeking nomination or election to a two-year office or to a candidate committee in an aggregate amount greater than \$2,000 during an election period;
- (2) A candidate seeking nomination or election to a four-year nonstatewide office or to a candidate committee in an aggregate amount greater than \$4,000 during an election period; or

- (3) A candidate seeking nomination or election to a four-year statewide office or to a candidate committee in an aggregate amount greater than \$6,000 during an election period.

(b) For purposes of this section, the length of term of an office shall be the usual length of term of the office as unaffected by reapportionment, a special election to fill a vacancy, or any other factor causing the term of the office the candidate is seeking to be less than the usual length of term of that office. [L 2010, c 211, pt of §2]

§11-358 Contributions to noncandidate committees; limits. No person shall make contributions to a noncandidate committee in an aggregate amount greater than \$1,000 in an election. This section shall not apply to ballot issue committees. [L 2010, c 211, pt of §2]

§11-359 Family contributions. (a) A contribution by a dependent minor shall be reported in the name of the minor but included in the aggregate contributions of the minor's parent or guardian.

(b) A contribution by the candidate's immediate family shall be exempt from section 11-355, but shall be limited in the aggregate to \$50,000 in any election period; provided that the aggregate amount of loans and contributions received from the candidate's immediate family does not exceed \$50,000 during an election period. [L 2010, c 211, pt of §2]

§11-360 Contributions to a party. (a) No person shall make contributions to a party in an aggregate amount greater than \$25,000 in any two-year election period, except as provided in subsection (b).

(b) No political committee established and maintained by a national political party shall make contributions to a party in an aggregate amount greater than \$50,000 in any two-year election period.

(c) If a person makes a contribution to a party that is earmarked for a candidate or candidates, the contribution shall be deemed to be a contribution from both the original contributor and the party distributing such funds to a candidate or candidates. The earmarked funds shall be promptly distributed by the party to the candidate.

(d) This section shall not prohibit a candidate from making contributions to the candidate's party if contributions are not earmarked for another candidate. [L 2010, c 211, pt of §2]

§11-361 Aggregation of contributions and expenditures. (a) All contributions and expenditures of a person whose contributions or expenditures are financed, maintained, or controlled by any corporation, labor organization, association, party, or any other person, including any parent, subsidiary, branch, division, department, or local unit of the corporation, labor organization, association, party, political committees established and maintained by a national political party, or by any group of those persons shall be considered to be made by a single person.

(b) A contribution by a partnership shall not exceed the limitations in this section and shall be attributed to the partnership and to each partner in direct proportion to the partner's share of the partnership profits, according to instructions that shall be

provided by the partnership to the party, candidate, or committee receiving the contribution.

- (c) A contribution by a limited liability company shall be treated as follows:
 - (1) A contribution by a limited liability company that is treated as a partnership by the Internal Revenue Service shall be considered a contribution from a partnership;
 - (2) A contribution by a limited liability company that is treated as a corporation by the Internal Revenue Service shall be considered a contribution from a corporation;
 - (3) A contribution by a limited liability company with a single individual member that is not treated as a corporation by the Internal Revenue Service shall be attributed only to that single individual member; and
 - (4) A limited liability company that makes a contribution shall, at the time the limited liability company makes the contribution, provide information to the party, committee, or candidate receiving the contribution specifying how the contribution is to be attributed.
- (d) A person's contribution to a party that is earmarked for a candidate or candidates shall be included in the aggregate contributions of both the person and the party. The earmarked funds shall be promptly distributed by the party to the candidate.
- (e) A contribution by a dependent minor shall be reported in the name of the minor but included in the aggregate contributions of the minor's parent or guardian. [L 2010, c 211, pt of §2]

§11-362 Contributions limited from nonresident persons. (a) Contributions from all persons who are not residents of the state at the time the contributions are made shall not exceed thirty per cent of the total contributions received by a candidate or candidate committee for each election period.

(b) This section shall not be applicable to contributions from the candidate's immediate family. [L 2010, c 211, pt of §2]

§11-363 Other contributions and expenditures. (a) Expenditures or disbursements for electioneering communications as defined in section 11-341, or any other coordinated activity made by any person for the benefit of a candidate in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate committee, or their agents, shall be considered to be a contribution to the candidate and expenditure by the candidate.

The financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written or other campaign materials prepared by the candidate, candidate committee, or agents shall be considered to be a contribution to the candidate.

This subsection shall not apply to candidates for governor or lieutenant governor supporting a co-candidate in the general election.

- (b) "Coordinated activity" means:
 - (1) The payment by any person in cooperation, consultation, or concert with, at the request of, or pursuant to, any general or particular understanding

with a candidate, candidate committee, the party of a candidate, or an agent of a candidate, candidate committee, or the party of a candidate;

- (2) The payment by any person for the production, dissemination, distribution, or republication of any written, graphic, or other form of campaign material, in whole or in part, prepared by a candidate, candidate committee, or noncandidate committee, or an agent of a candidate, candidate committee, or noncandidate committee; or
- (3) Any payment by any person or contract for any electioneering communication, as defined in section 11-341, where the payment is coordinated with a candidate, candidate committee, the party of the candidate, or an agent of a candidate, candidate committee, or the party of the candidate.

(c) No expenditure for a candidate who files an affidavit with the commission agreeing to limit aggregate expenditures by the candidate, including coordinated activity by any person, shall be made or incurred by a candidate committee or noncandidate committee without authorization of the candidate or the candidate's authorized representative. Every expenditure so authorized and made or incurred shall be attributed to the candidate with whom the candidate committee or noncandidate committee is directly associated for the purpose of imposing the expenditure limitations set forth in section 11-423. [L 2010, c 211, pt of §2]

§11-364 Excess contribution; return; escheat. (a) Any candidate, candidate committee, or noncandidate committee that receives in the aggregate more than the applicable contribution limit in section 11-357, 11-358, 11-359, or 11-360 shall return any excess contribution to the contributor within thirty days of receipt of the excess contribution. Any excess contribution not returned to the contributor within thirty days shall escheat to the Hawaii election campaign fund.

(b) A candidate, candidate committee, or noncandidate committee that complies with this section prior to the initiation of administrative action shall not be subject to any fine under section 11-410. [L 2010, c 211, pt of §2]

F. LOANS

§11-371 Loan to candidate committee. (a) A candidate or candidate committee may receive a loan from any or all of the following:

- (1) The candidate's own funds;
- (2) A financial institution regulated by the State or a federally chartered depository institution and made in accordance with applicable law in the ordinary course of business;
- (3) The candidate's immediate family in an aggregate amount not to exceed \$50,000 during an election period; provided that the aggregate amount of loans and contributions received from the immediate family shall not exceed \$50,000 during an election period; and

- (4) Persons other than the candidate, a financial institution described in paragraph (2), or the candidate's immediate family, in an aggregate amount not to exceed \$10,000 during an election period; provided that:
 - (A) If the \$10,000 limit for loans from persons other than the immediate family is reached, the candidate and candidate committee shall be prohibited from receiving or accepting any other loans until the \$10,000 is repaid in full; and
 - (B) If a loan from persons other than the candidate's immediate family is not repaid within one year of the date that the loan is made, the candidate and candidate committee shall be prohibited from accepting any other loans. All campaign funds, including contributions subsequently received, shall be used to repay the outstanding loan in full.
- (b) For purposes of this section, a "loan" does not include expenditures made on behalf of a candidate committee by a candidate, volunteer, or employee if:
 - (1) The candidate's, volunteer's, or employee's aggregate expenditures do not exceed \$1,500 within a thirty-day period;
 - (2) A dated receipt and a written description of the name and address of each payee and the amount, date, and purpose of each expenditure is provided to the candidate committee before the candidate committee reimburses the candidate, volunteer, or employee; and
 - (3) The candidate committee reimburses the candidate, volunteer, or employee within forty-five days of the expenditures being made. [L 2010, c 211, pt of §2]

§11-372 Reporting loan; written loan agreement. (a) Every loan shall be reported as provided in section 11-333.

(b) Every loan in excess of \$100 shall be documented as provided in section 11-333.

(c) A loan shall be treated as a contribution, subject to all relevant provisions of this part, if the loan is not reported or documented as provided in section 11-333. [L 2010, c 211, pt of §2]

§11-373 Noncandidate committee loan prohibited. A noncandidate committee shall not receive or make a loan. [L 2010, c 211, pt of §2]

G. EXPENDITURES

§11-381 Campaign funds only used for certain purposes. (a) Campaign funds may be used by a candidate, treasurer, or candidate committee:

- (1) For any purpose directly related:
 - (A) In the case of the candidate, to the candidate's own campaign; or
 - (B) In the case of a candidate committee or treasurer of a candidate committee, to the campaign of the candidate, question, or issue with which they are directly associated;

- (2) To purchase or lease consumer goods, vehicles, equipment, and services that provide a mixed benefit to the candidate. The candidate, however, shall reimburse the candidate's candidate committee for the candidate's personal use of these items unless the personal use is de minimis;
 - (3) To make donations to any community service, educational, youth, recreational, charitable, scientific, or literary organization; provided that in any election period, the total amount of all donations shall be no more than twice the maximum amount that one person may contribute to that candidate pursuant to section 11-357; provided further that no contributions shall be made from the date the candidate files nomination papers to the date of the general election;
 - (4) To make donations to any public school or public library; provided that in any election period, the total amount of all contributions shall be no more than twice the maximum amount that one person may contribute to that candidate pursuant to section 11-357; provided further that any donation under this paragraph shall not be aggregated with or imputed toward any limitation on donations pursuant to paragraph (3);
 - (5) To award scholarships to full-time students attending an institution of higher education or a vocational education school in a program leading to a degree, certificate, or other recognized educational credential; provided that in any election period, the total amount of all scholarships awarded shall be no more than twice the maximum amount that one person may contribute to that candidate pursuant to section 11-357; provided further that no awards shall be made from the filing deadline for nomination papers to the date of the general election;
 - (6) To purchase not more than two tickets for each event held by another candidate or committee, whether or not the event constitutes a fundraiser as defined in section 11-342;
 - (7) To make contributions to the candidate's party so long as the contributions are not earmarked for another candidate; or
 - (8) To pay for ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an office.
- (b) Campaign funds may be used for the candidate's next subsequent election upon registration for the election pursuant to section 11-321. [L 2010, c 211, pt of §2; am L 2012, c 20, §2]

§11-382 Prohibited uses of campaign funds. Campaign funds shall not be used:

- (1) To support the campaigns of candidates other than the candidate with which they are directly associated;
- (2) To campaign against any other candidate not directly opposing the candidate with which they are directly associated; or
- (3) For personal expenses. [L 2010, c 211, pt of §2]

§11-383 Exceptions. Notwithstanding sections 11-381 and 11-382:

- (1) A party may support more than one candidate; and
- (2) A candidate for the office of governor or lieutenant governor may support a co-candidate in the general election. [L 2010, c 211, pt of §2]

§11-384 Disposition of campaign funds; termination of registration. (a)

The candidate committee and candidate who receives contributions for an election but fails to file nomination papers for that election shall return residual funds to the contributors no later than ninety days after the date on which nominations for that election shall be filed. Funds not returned to contributors shall escheat to the Hawaii election campaign fund.

(b) The candidate committee and candidate who withdraws or ceases to be a candidate for the election because of death, disqualification, or other reasons shall return residual funds to the contributors no later than ninety days after the candidate ceases to be a candidate. Funds not returned to contributors shall escheat to the Hawaii election campaign fund.

(c) A candidate who is elected to office, including a candidate subject to term limits and a candidate who resigned before the end of the term of office and the candidate committee of such a candidate, may use campaign funds as provided in section 11-381 or return funds to contributors until four years from the date of the election for which the campaign funds were received. Funds that are not used or returned to contributors shall escheat to the Hawaii election campaign fund.

(d) A candidate who loses an election and the candidate committee of such a candidate may use campaign funds as provided in section 11-381 or return funds to contributors until one year from the date of the election for which the campaign funds were received. Funds that are not used or returned to contributors shall escheat to the Hawaii election campaign fund.

(e) A candidate committee that disposes of campaign funds pursuant to this section shall terminate its registration with the commission as provided in section 11-326.

(f) Notwithstanding any of the foregoing, campaign funds may be used for the candidate's next subsequent election as provided in section 11-381 upon registration for the election pursuant to section 11-321.

(g) The commission shall adopt rules pursuant to chapter 91 to carry out the purposes of this section. [L 2010, c 211, pt of §2]

H. ADVERTISEMENTS

§11-391 Advertisements. (a) *[Subsection effective until November 4, 2014.]*

Any advertisement shall contain:

- (1) The name and address of the candidate, candidate committee, noncandidate committee, or other person paying for the advertisement; and
- (2) A notice in a prominent location stating either that:
 - (A) The advertisement is published, broadcast, televised, or circulated with the approval and authority of the candidate; provided that an

advertisement paid for by a candidate, candidate committee, or ballot issue committee does not need to include the notice; or

- (B) The advertisement is published, broadcast, televised, or circulated without the approval and authority of the candidate.

(a) *[Subsection effective November 5, 2014.]* Any advertisement that is broadcast, televised, circulated, or published, including by electronic means, shall contain:

- (1) The name and address of the candidate, candidate committee, noncandidate committee, or other person paying for the advertisement; and
- (2) A notice in a prominent locations stating either that:
 - (A) The advertisement has the approval and authority of the candidate; provided that an advertisement paid for by a candidate, candidate committee, or ballot issue committee does not need to include the notice; or
 - (B) The advertisement has not been approved by the candidate.

(b) The fine for violation of this section, if assessed by the commission, shall not exceed \$25 for each advertisement that lacks the information required by this section, and shall not exceed an aggregate amount of \$5,000. [L 2010, c 211, pt of §2; am L 2013, c 112, §10]

§11-392 House bulletins. The costs of preparing, printing, and circulating house bulletins and the writings, drawings, and photographs contained therein, except for paid political advertisements, shall be exempt from the provisions of this part. [L 2010, c 211, pt of §2]

§11-393 Identification of certain top contributors to noncandidate committees making only independent expenditures. *[Section effective November 5, 2014.]* (a) An advertisement shall contain an additional notice in a prominent location immediately after or below the notices required by section 11-391, if the advertisement is broadcast, televised, circulated, or published, including by electronic means, and is paid for by a noncandidate committee that certifies to the commission that it makes only independent expenditures. This additional notice shall start with the words, “The three top contributors for this advertisement are”, followed by the names of the three top contributors, as defined in subsection (e), who made the highest aggregate contributions to the noncandidate committee for the purpose of funding the advertisement; provided that:

- (1) If a noncandidate committee is only able to identify two top contributors who made contributions for the purpose of funding the advertisement, the additional notice shall start with the words, “The two top contributors for this advertisement are”, followed by the name of the two top contributors;
- (2) If a noncandidate committee is able to identify only one top contributor who made contributions for the purpose of funding the advertisement, the additional notice shall start with the words, “The top contributor for this advertisement is”, followed by the name of the top contributor;
- (3) If a noncandidate committee is unable to identify any top contributors who made contributions for the purpose of funding the advertisement, the additional notice shall start with the words, “The three top contributors for

this noncandidate committee are”, followed by the names of the three top contributors who made the highest aggregate contributions to the noncandidate committee; and

- (4) If there are no top contributors to the noncandidate committee, the noncandidate committee shall not be subject to this section.

In no case shall a noncandidate committee be required to identify more than three top contributors pursuant to this section.

(b) If a noncandidate committee has more than three top contributors who contributed in equal amounts the noncandidate committee may select which of the top contributors to identify in the advertisement; provided that the top contributors not identified in the advertisement did not make a higher aggregate contribution than those top contributors who are identified in the advertisement. The additional notice required for noncandidate committees described under this subsection shall start with the words “Three of the top contributors for this advertisement are” or “Three of the top contributors to this noncandidate committee are”, as appropriate, followed by the names of the three top contributors.

(c) This section shall not apply to advertisements broadcast by radio or television of such short duration that including a list of top contributors in the advertisement would constitute a hardship to the noncandidate committee paying for the advertisement. A noncandidate committee shall be subject to all other requirements under this part regardless of whether a hardship exists pursuant to this subsection. The commission shall adopt rules pursuant to chapter 91 to establish criteria to determine when including a list of top contributors in an advertisement of short duration constitutes a hardship to a noncandidate committee under this subsection.

(d) Any noncandidate committee that violates this section shall be subject to a fine under section 11-410.

(e) For purposes of this part, “top contributor” means a contributor who has contributed an aggregate amount of \$10,000 or more to a noncandidate committee within a twelve-month period prior to the purchase of an advertisement. [L 2013, c 112, §2]

I. ENFORCEMENT

§11-401 Subpoena powers. (a) The commission may subpoena witnesses, examine them under oath, and require the production of books, papers, documents, or objects to the commission office or at any place in the State whether or not the subpoena is in connection with any hearing; provided that the person or documents subpoenaed shall be relevant to a matter under study or investigation by the commission.

(b) The books, papers, documents, or objects may be retained by the commission for a reasonable period of time for examination, audit, copying, testing, and photographing.

(c) The subpoena power shall be exercised by the chairperson of the commission, or the chairperson's designee.

(d) Upon application of the commission, obedience to the subpoena shall be enforced by the circuit court in the county in which the person subpoenaed resides or is

found, in the same manner as a subpoena issued by a circuit court. [L 2010, c 211, pt of §2]

§11-402 Filing of complaint. (a) A person alleging violations of this part shall file a complaint with the commission.

(b) A complaint initiated by the commission shall be in writing and signed by the executive director.

(c) A complaint by a person other than the executive director shall be in writing, signed by the person filing the complaint, and notarized. [L 2010, c 211, pt of §2]

§11-403 Notice of complaint; opportunity to explain or respond to complaint. (a) The commission shall give notice of receipt of the complaint and a copy of the complaint to the respondent.

(b) The respondent may explain or otherwise respond in writing to the complaint and explain or otherwise respond to the complaint at a meeting promptly noticed by the commission and conducted under chapter 92. [L 2010, c 211, pt of §2]

§11-404 Initial determination by the commission. The commission shall promptly determine, without regard to chapter 91, to:

- (1) Summarily dismiss the complaint;
- (2) Investigate further;
- (3) Make a preliminary determination; or
- (4) Refer the complaint to an appropriate prosecuting attorney for prosecution under section 11-411. [L 2010, c 211, pt of §2]

§11-405 Preliminary determination regarding probable cause. (a) Upon hearing the response, if the respondent explains or otherwise responds to the complaint, and upon completion of any investigation, the commission may make a prompt preliminary determination as to whether probable cause exists that a violation of this part has been committed. The preliminary determination with findings of fact and conclusions of law shall be served upon the respondent by certified mail.

(b) The respondent shall be afforded an opportunity to contest the commission's preliminary determination of probable cause by making a request for a contested case hearing under chapter 91 within twenty days of receipt of the preliminary determination. Failure to request a contested case hearing shall render the commission's preliminary determination final. [L 2010, c 211, pt of §2]

§11-406 Waiver of further proceedings. The commission may waive further proceedings due to action the respondent takes to remedy or correct the alleged violation, including the payment of any administrative fine. The commission shall make the remedial or corrective action taken by the respondent, the commission's decision in light of the action to waive further proceedings, and the commission's justification for its decision a part of the public record. [L 2010, c 211, pt of §2]

§11-407 Contested case hearing. (a) A contested case hearing shall be conducted pursuant to chapter 91 and any rules adopted by the commission, except as provided in this section.

(b) If a hearing is held before the commission, the commission shall not be bound by strict rules of evidence when conducting a hearing to determine whether a violation of this part has occurred, and the degree or quantum of proof required shall be a preponderance of the evidence.

(c) The commission or hearings officer, if there is no dispute as to the facts involved in a particular matter, may permit the parties to proceed by memoranda of law in lieu of a hearing unless the procedure would unduly burden any party or is otherwise not conducive to the ends of justice.

(d) A record shall be made of the proceeding.

(e) All parties shall be afforded full opportunity to present evidence and argument on all issues involved.

(f) Any person who appears before the commission shall have all of the rights, privileges, and responsibilities of a witness appearing before the courts of this State. All witnesses summoned before the commission or hearings officer shall receive reimbursements as paid in like circumstances in the courts of this State. Any person whose name is mentioned during a proceeding before the commission and who may be adversely affected thereby may appear or file a written statement for incorporation into the record of the proceeding.

(g) If a hearing is held before a hearings officer, the hearings officer shall render a recommended decision for the commission's consideration. Any party adversely affected by the decision may file written exceptions with the commission within fifteen days after receipt of a copy of the decision by certified mail.

(h) The commission, as expeditiously as possible after the close of the commission's hearing, shall issue its final determination of violation together with separate findings of fact and conclusions of law regarding whether a violation of this part has been committed. [L 2010, c 211, pt of §2]

§11-408 Dismissal. The complaint shall be dismissed if the commission makes a final determination that there is no violation of this part. [L 2010, c 211, pt of §2]

§11-409 Final determination of violation; order. If the commission makes a final determination of a violation of this part, its written decision with findings of fact and conclusions of law may order any of the following:

- (1) The return of any contribution;
- (2) The reimbursement of any unauthorized expenditure;
- (3) The payment of any administrative fine to the general fund of the State;
- (4) The respondent to cease and desist violations of this part; or
- (5) Any report, statement, or other information to be filed that may be required by this part. [L 2010, c 211, pt of §2]

§11-410 Administrative fines; relief. (a) The commission may make a decision or issue an order affecting any person violating any provision of this part or section 281-22 that may provide for the assessment of an administrative fine as follows:

- (1) If an individual, an amount not to exceed \$1,000 for each occurrence or an amount equivalent to three times the amount of an unlawful contribution or expenditure; or
- (2) If a corporation, organization, association, or labor union, an amount not to exceed \$1,000 for each occurrence;

provided that whenever a corporation, organization, association, or labor union violates this part, the violation may be deemed to be also that of the individual directors, officers, or agents of the corporation, organization, association, or labor union, who have knowingly authorized, ordered, or done any of the acts constituting the violation.

(b) Any order for the assessment of an administrative fine shall not be issued against a person without providing the person written notice and an opportunity to be heard at a hearing conducted under chapter 91. A person may waive these rights by written stipulation or consent.

(c) If an administrative fine is imposed upon a candidate, the commission may order that the fine, or any portion, be paid from the candidate's personal funds.

(d) If the person to whom the commission's order is directed does not comply with the order, the first circuit court, upon application of the commission, shall issue an order requiring the person to comply with the commission's order. Failure to obey such a court order shall be punished as contempt.

(e) Any administrative fine collected by the commission shall be deposited in the general fund of the State.

(f) Any person or the commission may sue for injunctive relief to compel compliance with this part.

(g) The provisions of this section shall not prohibit prosecution under any appropriate provision of the Hawaii Penal Code or section 11-412.

(h) This section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the fines prescribed by sections 11-340 and 11-391(b). [L 2010, c 211, pt of §2]

§11-411 Criminal referral. In lieu of an administrative determination that a violation of this part has been committed, the commission may refer the complaint to the attorney general or county prosecutor at any time it believes the respondent may have recklessly, knowingly, or intentionally committed a violation. [L 2010, c 211, pt of §2]

§11-412 Criminal prosecution. (a) Any person who recklessly, knowingly, or intentionally violates any provision of this part shall be guilty of a misdemeanor.

(b) Any person who knowingly or intentionally falsifies any report required by this part with the intent to circumvent the law or deceive the commission or who violates section 11-352 or 11-353 shall be guilty of a class C felony. A person charged with a class C felony shall not be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853.

(c) A person who is convicted under this section shall be disqualified from holding elective public office for a period of four years from the date of conviction.

(d) For purposes of prosecution for violation of this part, the offices of the attorney general and the prosecuting attorney of the respective counties shall be deemed to have concurrent jurisdiction to be exercised as follows:

- (1) Prosecution shall commence with a written request from the commission or upon the issuance of an order of the court; provided that prosecution may commence prior to any proceeding initiated by the commission or final determination;
- (2) In the case of statewide offices, parties, or issues, the attorney general or the prosecuting attorney for the city and county of Honolulu shall prosecute any violation; and
- (3) In the case of all other offices, parties, or issues, the attorney general or the prosecuting attorney for the respective county shall prosecute any violation.

In the commission's choice of prosecuting agency, it shall be guided by whether any conflicting interest exists between the agency and its appointive authority.

(e) The court shall give priority to the expeditious processing of prosecutions under this section.

(f) Prosecution for violations of this part shall not commence after five years have elapsed from the date of the violation or date of filing of the report covering the period in which the violation occurred, whichever is later.

(g) This section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the fines prescribed by sections 11-340 and 11-391(b). [L 2010, c 211, pt of §2]

J. PARTIAL PUBLIC FINANCING

§11-421 Hawaii election campaign fund; creation. (a) The Hawaii election campaign fund is created as a trust fund within the state treasury.

(b) The fund shall consist of:

- (1) All moneys collected from persons who have designated a portion of their income tax liability to the fund as provided in section 235-102.5(a);
- (2) Any general fund appropriations; and
- (3) Other moneys collected pursuant to this part.

(c) Moneys in the fund shall be paid to candidates by the comptroller as prescribed in section 11-431 and may be used for the commission's operating expenses, including staff salaries and fringe benefits. [L 2010, c 211, pt of §2]

§11-422 Depletion of fund. (a) The commission shall be under no obligation to provide moneys to candidates if, in the partial public funding program or comprehensive public funding for elections to the county of Hawaii council, moneys in the Hawaii election campaign fund are near depletion.

(b) For the purpose of the partial funding program, if the Hawaii election campaign fund is close to depletion as determined by the commission, the commission shall determine the amounts available to eligible candidates based on their order of eligibility in qualifying for partial public funds, as determined by the date of filing of an application for public funds with the commission pursuant to section 11-428; provided that the application has been accepted by the commission.

(c) For the purpose of the comprehensive public funding for elections to the county councils, if the Hawaii election campaign fund is close to depletion, the commission shall determine whether the program shall be operative in accordance with this part. [L 2010, c 211, pt of §2]

§11-423 Voluntary expenditure limits; filing affidavit. (a) Any candidate may voluntarily agree to limit the candidate's expenditures and those of the candidate's candidate committee or committees and the candidate's party on the candidate's behalf by filing an affidavit with the campaign spending commission.

(b) The affidavit shall state that the candidate knows the voluntary campaign expenditure limitations as set out in this part and that the candidate is voluntarily agreeing to limit the candidate's expenditures and those made on the candidate's behalf by the amount set by law. The affidavit shall be subscribed to by the candidate and notarized and filed no later than the time of filing nomination papers with the chief election officer or county clerk.

(c) The affidavit shall remain effective until the termination of the candidate committee or the opening of filing of nomination papers for the next succeeding election, whichever occurs first. An affidavit filed under this section may not be rescinded.

(d) From January 1 of the year of any primary, special, or general election, the aggregate expenditures for each election by a candidate who voluntarily agrees to limit campaign expenditures, inclusive of all expenditures made or authorized by the candidate alone, all treasurers, the candidate committee, and noncandidate committees on the candidate's behalf, shall not exceed the following amounts expressed, respectively multiplied by the number of voters in the last preceding general election registered to vote in each respective voting district:

- (1) For the office of governor - \$2.50;
- (2) For the office of lieutenant governor - \$1.40;
- (3) For the office of mayor - \$2.00;
- (4) For the offices of state senator, state representative, county council member, and prosecuting attorney - \$1.40; and
- (5) For all other offices - 20 cents. [L 2010, c 211, pt of §2; am L 2011, c 5, §5; am L 2013, c 63, §1]

§11-424 Tax deduction for qualifying contributions. (a) An individual resident of Hawaii may claim a state income tax deduction pursuant to section 235-7(g)(2), for contributions to a candidate who files an affidavit pursuant to section 11-423 and does not exceed the expenditure limit. Cancelled checks or copies of the same shall be considered adequate receipt forms to attach to the tax form to claim the credit.

(b) The commission shall forward a certified copy of the affidavit to the director of taxation.

(c) If a candidate has not filed the affidavit pursuant to section 11-423, the candidate shall inform all contributors in writing immediately upon receipt of the contribution that they are not entitled to a tax deduction for their contributions to the candidate. The director of taxation shall not allow any contributor to take a deduction, pursuant to section 235-7(g)(2), for any contribution to a candidate for a statewide or

county office who has not filed the affidavit pursuant to section 11-423. [L 2010, c 211, pt of §2]

Note

Section 235-7(g)(2) referred to in subsections (a) and (c) is repealed.

§11-425 Maximum amount of public funds available to candidate. (a) The maximum amount of public funds available in each election to a candidate for the office of governor, lieutenant governor, or mayor shall not exceed ten per cent of the expenditure limit established in section 11-423 (d) for each election.

(b) The maximum amount of public funds available in each election to a candidate for the office of state senator, state representative, county council member, and prosecuting attorney shall not exceed fifteen per cent of the expenditure limit established in section 11-423(d) for each election.

(c) For the office of Hawaiian affairs, the maximum amount of public funds available to a candidate shall not exceed \$1,500 in any election year.

(d) For all other offices, the maximum amount of public funds available to a candidate shall not exceed \$100 in any election year.

(e) Each candidate who qualified for the maximum amount of public funding in any primary election and who is a candidate for a subsequent general election shall apply with the commission to be qualified to receive the maximum amount of public funds as provided in this section for the respective general election. For purposes of this section, "qualified" means meeting the qualifying campaign contribution requirements of section 11-429. [L 2010, c 211, pt of §2; am L 2011, c5, §6]

§11-426 Candidate exceeds voluntary expenditure limit. A candidate who files the affidavit agreeing to limit expenditures and who exceeds the expenditure limit for that election shall:

- (1) Notify all opponents, the chief election officer, and the commission by telephone and writing on the day the expenditure limit is exceeded;
- (2) Pay the balance of the full filing fee; and
- (3) Provide reasonable notice to all contributors within thirty days of exceeding the limit that the expenditure limit was exceeded and contributions to the candidate no longer qualify for a state income tax deduction. [L 2010, c 211, pt of §2]

§11-427 Reserving use of contributions. A candidate who files the affidavit voluntarily agreeing to limit expenditures and who receives contributions that in aggregate exceed the expenditure limit for an election shall reserve use of any contributions that exceed the limit until after the applicable election. [L 2010, c 211, pt of §2]

§11-428 Eligibility requirements for public funds. In order to be eligible to receive public funds for an election, a candidate shall certify that the candidate will meet all the following requirements:

- (1) The candidate and any candidate committee authorized by the candidate shall not incur campaign expenses in excess of the expenditure limitations imposed by section 11-423;
- (2) The candidate has qualified to be on the election ballot in a primary or general election;
- (3) The candidate has filed a statement of intent to seek qualifying contributions. A contribution received before the filing of a statement of intent to seek public funds shall not be considered a qualifying contribution;
- (4) The candidate or candidate committee authorized by the candidate has received the minimum qualifying contribution amounts for the office sought by the candidate as set forth in section 11-429;
- (5) The aggregate of contributions certified with respect to any person under paragraph (4) does not exceed \$100;
- (6) The candidate agrees to obtain and furnish any evidence relating to expenditures that the commission may request;
- (7) The candidate agrees to keep and furnish records, books, and other information that the commission may request;
- (8) The candidate agrees to an audit and examination by the commission pursuant to section 11-434 and to pay any amounts required to be paid pursuant to that section; and
- (9) Each candidate and candidate committee in receipt of qualifying contributions that may be taken into account for purposes of public funding shall maintain, on a form prescribed by the commission, records that show the date and amount of each qualifying contribution and the full name and mailing address of the person making the contribution. The candidate and the candidate committee authorized by the candidate shall transmit to the commission all reports with respect to these contributions that the commission may require. [L 2010, c 211, pt of §2]

§11-429 Minimum qualifying contribution amounts; qualifying contribution statement. (a) As a condition of receiving public funds for a primary or general election, a candidate shall not be unopposed in any election for which public funds are sought, shall have filed an affidavit with the commission pursuant to section 11-423 to voluntarily limit the candidate's campaign expenditures, and shall be in receipt of the following sum of qualifying contributions from individual residents of Hawaii:

- (1) For the office of governor — qualifying contributions that in the aggregate exceed \$100,000;
- (2) For the office of lieutenant governor — qualifying contributions that in the aggregate exceed \$50,000;
- (3) For the office of mayor for each respective county:
 - (A) County of Honolulu — qualifying contributions that in the aggregate exceed \$50,000;
 - (B) County of Hawaii — qualifying contributions that in the aggregate exceed \$15,000;

- (C) County of Maui — qualifying contributions that in the aggregate exceed \$10,000; and
 - (D) County of Kauai — qualifying contributions that in the aggregate exceed \$5,000;
- (4) For the office of prosecuting attorney for each respective county:
 - (A) County of Honolulu — qualifying contributions that in the aggregate exceed \$30,000;
 - (B) County of Hawaii — qualifying contributions that in the aggregate exceed \$10,000; and
 - (C) County of Kauai — qualifying contributions that in the aggregate exceed \$5,000;
- (5) For the office of county council — for each respective county:
 - (A) County of Honolulu - qualifying contributions that in the aggregate exceed \$5,000;
 - (B) County of Hawaii — qualifying contributions that in the aggregate exceed \$1,500;
 - (C) County of Maui — qualifying contributions that in the aggregate exceed \$5,000; and
 - (D) County of Kauai — qualifying contributions that in the aggregate exceed \$3,000;
- (6) For the office of state senator — qualifying contributions that, in the aggregate exceed \$2,500;
- (7) For the office of state representative — qualifying contributions that, in the aggregate, exceed \$1,500;
- (8) For the office of Hawaiian affairs — qualifying contributions that, in the aggregate, exceed \$1,500; and
- (9) For all other offices, qualifying contributions that, in the aggregate, exceed \$500.
- (b) A candidate shall obtain the minimum qualifying contribution amount set forth in subsection (a) once for the election period.
 - (1) If the candidate obtains the minimum qualifying contribution amount, the candidate is eligible to receive:
 - (A) The minimum payment in an amount equal to the minimum qualifying contribution amounts; and
 - (B) Payments of \$1 for each \$1 of qualifying contributions in excess of the minimum qualifying contribution amounts; and
 - (2) A candidate shall have at least one other qualified candidate as an opponent for the primary or general election to receive public funds for that election.
 - (c) The candidate shall not receive more than the maximum amount of public funds available to a candidate pursuant to section 11-425; provided that the candidate shall not receive public funds for a primary election if the candidate does not obtain the minimum qualifying contribution amounts before the date of the primary election. [L 2010, c 211, pt of §2]

§11-430 Application for public funds. (a) Each application for public funds shall be signed by the candidate and notarized, and accompanied by the qualifying campaign contribution statement or statements.

(b) The application shall be mailed or delivered to the commission and shall not be valid unless received by the commission no later than thirty days after the general election.

(c) Each candidate in receipt of the minimum qualifying contribution amount established for the office that the candidate seeks may apply to the commission for public funding after the candidate has become a candidate in a primary or general election. [L 2010, c 211, pt of §2]

§11-431 Payment to candidate. (a) Upon the commission's approval of the application and statement of qualifying contributions, the commission shall direct the comptroller to distribute matching public funds up to the maximum amount of public funds allowed by section 11-425. Public funds shall be distributed to the candidate within twenty days from the date that the candidate's initial application and qualifying contribution statement is approved by the commission.

(b) The commission shall make additional determinations within fourteen days after receiving a complete application and supplemental statement of qualifying contributions from a candidate.

(c) All determinations made by the commission under this section are final and conclusive, except to the extent they are subject to examination and audit by the commission under section 11-434. [L 2010, c 211, pt of §2]

§11-432 Use of public funds. (a) Public funds shall be deposited in a depository institution, as defined in section 412:1-109, duly authorized to do business in the State, such as a bank, savings bank, savings and loan association, depository financial services loan company, credit union, intra-Pacific bank, or similar financial institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(b) No expenditures of any public funds shall be made except by checks drawn on such checking account.

(c) Public funds shall be only used to:

(1) Defray expenditures of the candidate or the candidate committee authorized by the candidate; and

(2) Repay loans, the proceeds of which were used to defray expenditures.

(d) Public funds shall not be transferred to another candidate for any election.

(e) Unexpended public funds shall be returned to the commission by the deadline for filing the final report for the election for which the funds were received. [L 2010, c 211, pt of §2]

§11-433 Post-election report required. The treasurer shall electronically submit an expenditure of public funds report to the commission no later than twenty days after a primary election and no later than thirty days after a general election certifying that all public funds paid to the candidate have been used as required by this part.

Should the commission determine that any portion of the public funds have been used for noncampaign or other improper expenses, it shall report such finding to the attorney general and shall order the candidate to return all or part of the funds paid to that candidate for a primary or general election. When public funds are returned, the funds shall be deposited into the Hawaii election campaign fund. [L 2010, c 211, pt of §2]

§11-434 Post-election examination and audit; return of funds. (a) The commission shall examine and audit the public funds received by all candidates, qualifying contributions, and the expenditures made by all candidates within sixty days after each general election.

(b) The commission shall adopt rules, pursuant to chapter 91, prior to the payment of public money, regarding expenditures which qualify under section 11-432.

(c) If the commission determines that any payment of public funds to a candidate exceeded the aggregate amount to which the candidate was entitled, the commission shall notify the candidate within two years of the payment of the public funds and the candidate shall repay the excess amount to the Hawaii election campaign fund.

(d) If the commission determines that any public funds were used for any improper purpose, the commission shall notify the candidate, and the candidate shall pay to the Hawaii election campaign fund an amount equal to three hundred per cent of such amount in addition to any fines under section 11-410 and section 11-412. [L 2010, c 211, pt of §2]

§11-435 Report and recommendation. In January of each year, the commission shall submit to the legislature:

- (1) A study and recommendations of reasonable campaign expenditure and contribution limits and the factors which may be relevant in their establishment; and
 - (2) A report concerning the status of the Hawaii election campaign fund.
- [L 2010, c 211, pt of §2]